

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 13
)	
KUKU BANKOLE BABATUNDE,)	CASE NO. 11-68278 - MHM
)	
Debtor.)	
<hr/>		
OMOLOLA M. OWOADE-TAYLOR,)	
)	
Plaintiff,)	ADVERSARY PROCEEDING
v.)	NO. 11-5700
)	
KUKU BANKOLE BABATUNDE,)	
)	
Defendant.)	
<hr/>		
OMOLOLA OWOADE-TAYLOR,)	
HEDGEPEETH & HEREDIA, LLC,)	
)	
Plaintiff,)	ADVERSARY PROCEEDING
v.)	NO. 11-5564
)	
KUKU BANKOLE BABATUNDE,)	
)	
Defendant.)	

ORDER ON PLAINTIFFS' ATTORNEYS' FEES

This adversary proceeding is before the Court on Plaintiffs' *Supplemental Motion for Judgment for Attorneys' Fees*. Plaintiffs filed a joint motion for summary judgment April 23, 2012, seeking a ruling that Debtor's obligation to pay certain attorneys' fees in connection with a divorce decree is nondischargeable pursuant to 11 U.S.C. § 523(a)(5)

and is entitled to priority under § 507(a)(1). In the motion for summary judgment, Plaintiffs requested attorneys' fees associated with bringing that motion, without explanation or support. On June 26, 2012, the motion was granted only with respect to the dischargeability and the priority of the obligation, and Plaintiffs were given 21 days to supplement the motion to support their request for attorneys' fees. On July 16, 2012, Plaintiffs filed this supplemental motion, arguing that they are entitled to attorneys' fees because the divorce decree should be construed as a contract which permits reimbursement of attorneys' fees in connection with enforcing its provisions; because an award of attorneys' fees is authorized under O.C.G.A. §§ 19-6-2 and 9-15-14; and because an award of attorneys' fees is warranted where Debtor's conduct preceding and during the bankruptcy case amounts to bad faith.

DISCUSSION

A prevailing litigant is not ordinarily entitled to recover attorneys' fees from the losing party absent specific statutory authority, a contractual right, or where the losing party has willfully disobeyed a court order or otherwise acted in bad faith. *Alyeska Pipeline Serv. Co. V. Wilderness Soc'y*, 421 U.S. 240, 256-257 (1975). Plaintiff argues that all of these exceptions apply.

First, Plaintiffs argue that the divorce decree should be construed as a contract which permits reimbursement of attorneys' fees in an enforcement action, citing *In re Feldmann*, 220 B.R. 138, 147 (Bankr. N.D. Ga. 1998) (Kahn, J.) (construing an attorneys' fees provision in a consent divorce decree as an enforceable provision of a contract). The divorce decree in *Feldmann* was executed in the state of Washington, and the *Feldmann*

court held that Washington state law treats property settlements and divorce decrees as contracts. The divorce decree in the present case, however, was entered in Georgia, where Washington law does not apply. Though Georgia law treats settlement agreements incorporated into divorce decrees as enforceable contracts,¹ it is not clear, and Plaintiff has not shown, whether a divorce decree entered as a consent order after trial should be treated as an enforceable contract. However, assuming, *arguendo*, that the divorce decree in the instant case could be construed as a contract, the plain meaning of its provisions must be strictly enforced. *DeRyke v. Teets*, 288 Ga. 160, 702 S.E.2d 205 (Ga. 2010). The plain meaning of the decree does not provide for attorneys' fees in this situation. Plaintiffs contend that Parts VI and VII of the decree provide for reimbursement of attorneys' fees in connection with those paragraphs, and thus the decree should be construed to provide for attorneys' fees in the present case. However, those provisions are clearly limited to their respective paragraphs.² The present case arises out of Part IX, which does not include such a provision.

Plaintiffs next argue that they are entitled to attorneys' fees as a result of Debtor's conduct. The court may assess attorneys' fees if "an attorney or party brought or

¹ See, e.g. *DeRyke v. Teets*, 288 Ga. 160, 702 S.E.2d 205 (Ga. 2010); *Jordan v. Jordan*, 290 Ga. 311, 721 S.E.2d 89 (Ga. App. 2011).

² Part VI concerns Debtor's obligations with respect to Plaintiff Owode-Taylor's business Sky Angel Nurses, Inc., and states in relevant part, "[T]he Wife shall be entitled to recover from Husband ... reasonable attorney's fees ... which may be owed, incurred or paid as a result of Husband's failure to comply with **this paragraph**." (Emphasis added). Part VII outlines each party's obligation with respect to Federal and State tax liability, and provides, "[T]he aggrieved party shall be entitled to recover from the other party ... reasonable attorneys' fees ... which he or she may owe, incur or pay as a result of the other party's failure to comply **with the terms of this paragraph**." Complaint at Ex. A (emphasis added). In *Feldmann*, on the other hand, the attorneys' fees were authorized under a general dispute resolution provision.

defended an action, or any part thereof, that lacked substantial justification or that ... was interposed for delay or harassment, or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct[.]” O.C.G.A. § 9-15-14(b); *see also Kreager v. Solomon & Flanagan, P.A.*, 775 F.2d 1541, 1542 (11th Cir. 1985) (“courts have the ‘inherent power’ to assess attorney’s fees as a fine ... when a losing party has ‘acted in bad faith, vexatiously, wantonly or for oppressive reasons.’”) (citing *Alyeska Pipeline*, 421 U.S. at 258-59). Plaintiffs contend that Debtor filed the bankruptcy case to avoid his obligations under the divorce decree, and unnecessarily expanded the proceeding by objecting to Plaintiffs’ proof of claim with respect to the dischargeability and priority of the attorneys’ fees.³ However, Debtor’s objection did not expand the proceeding, because in the Chapter 13 Trustee’s *Supplemental Objection to Confirmation and Motion to Dismiss*, Trustee specifically challenged whether Plaintiffs’ claims were entitled to preferential treatment. As a result of Debtor letting his objection stand and allowing Plaintiffs to file an unopposed motion for summary judgment, the court decided an issue necessary to the disposition of the underlying Chapter 13 proceeding. In support of their assertion that Debtor filed this case in bad faith, Plaintiffs point to the fact that Debtor failed to pay the attorneys’ fees awarded under the divorce decree for April through June of 2011, and filed this Chapter 13 case in June of 2011. However, debtors

³ Plaintiffs state that Debtor’s counsel, upon reviewing Plaintiffs’ Responses, initially agreed with Plaintiffs’ position and agreed to withdraw Debtor’s objection to Plaintiffs’ proofs of claim or file a consent order that the debt was nondischargeable and entitled to priority, but Debtor’s counsel later changed their position. Plaintiffs cite to “*Joint Statement Certifying Settlement Conference Held* [Doc. No. 16], ¶ 5” in support of this contention, but that document does not appear at Document Number 16, nor, apparently, has it been filed anywhere else in this adversary proceeding or in the underlying bankruptcy case. The docket simply shows that a settlement conference was held.

often miss payments to creditors in the months leading up to filing a petition in this court; Plaintiffs have failed to show how that alone could raise a presumption of bad faith.

Finally, Plaintiffs contend that the court has discretion to award attorneys' fees under O.C.G.A. § 19-6-2(a):


The grant of attorney's fees as a part of the expenses of litigation, made at any time during the pendency of the litigation, whether the action is for alimony, divorce and alimony, or contempt of court arising out of either an alimony case or a divorce and alimony case, including but not limited to contempt of court orders involving property division, child custody, and child visitation rights, shall be ... [w]ithin the sound discretion of the court, except that the court shall consider the financial circumstances of both parties as a part of its determination of the amount of attorney's fees, if any, to be allowed against either party..."

However, "bankruptcy courts have no role in assessing the amount of support owed to an ex-spouse. Such determination is clearly in the province of the state courts." *Matter of Myers*, 61 B.R. 891, 896 (Bankr. N.D. Ga. 1986) (Kahn, J.) (citing *In re Harrell*, 754 F.2d 902 (11th Cir. 1985)). Accordingly, it is hereby

ORDERED that Plaintiffs' motion for attorneys' fees is *denied*.

The Clerk, U.S. Bankruptcy Court, is directed to serve this Order upon Debtor, Debtor's attorney, Plaintiff, and counsel for Plaintiff.

IT IS SO ORDERED, this the 10th day of October, 2012.



MARGARETH. MURPHY
UNITED STATES BANKRUPTCY JUDGE